



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MRA/161301

PRELIMINARY RECITALS

Pursuant to a petition filed October 17, 2014, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on December 18, 2014. The record was held open for 10 days to allow petitioner's attorney to submit additional documentation, which was received.

The issue for determination is whether assets can be reallocated to the community spouse.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney John V. Kitzke
101 Falls Road
Suite 602
Grafton, WI 53024

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Karen Pearson

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner was found eligible for the Family Care Program (FCP) effective September 1, 2012.
3. In September 2014, petitioner had a review due for FCP.
4. On September 11, 2014 the agency requested verification of assets of petitioner's wife due to a change in policy. See Exhibit 6. The asset verification was received and the agency conducted an asset assessment.
5. On October 9, 2014 the agency issued a notice of decision to petitioner stating that he was no longer enrolled in the FCP due to excess assets. See Exhibit 11; see also Exhibit 12.
6. Petitioner's monthly income is \$1197 in social security and \$731.88 in pension. His community spouse receives \$483 in monthly social security. She also receives \$3360 in monthly long term care insurance payments.
7. The couple's assets totaled \$345,452.58 as of October 8, 2014. Exhibit 12.

DISCUSSION

The federal Medicaid Catastrophic Coverage Act of 1988 (MCAA) included extensive changes in state Medicaid (MA) eligibility determinations related to spousal impoverishment. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. Wis. Stat., §49.455(1).

When initially determining whether an institutionalized spouse is eligible for MA, county agencies are required to review the combined assets of the institutionalized spouse and the community spouse. *Medicaid Eligibility Handbook (MEH)*, §18.4.1. For ongoing cases where eligibility was determined without using spousal impoverishment rules, such as is the case here (See companion DHA case No. FCP-161299), the agency is to apply the spousal impoverishment rules at the next renewal. This includes completing an asset assessment. *MEH* §2.5.3. All available assets owned by the couple are to be considered. Homestead property, one vehicle, and anything set aside for burial are exempt from the determination. The couple's total non-exempt assets then are compared to an "asset allowance" to determine eligibility.

The asset allowance for this couple was \$117,240. Exhibit 12. See also *MEH*, §18.4.3 (version #14-01), which is based upon Wis. Stat., §49.455(6)(b). \$2,000 (the MA asset limit for the institutionalized individual) is then added to the asset allowance to determine the asset limit under spousal impoverishment policy. If the couple's assets are at or below the determined asset limit, the institutionalized spouse is eligible for MA. If the assets exceed the above amount, as a general rule the spouse is not MA eligible.

The MCAA established a "minimum monthly needs allowance" for the community spouse at a specified percentage of the federal poverty line. This amount is the amount of income considered necessary to maintain the community spouse in the community. As an exception to this general asset limit, assets above the allowance may be retained as determined through the fair hearing process, if income-producing assets exceeding the asset limit are necessary to raise the community spouse's monthly income to the minimum monthly needs allowance.

Wis. Stat., §49.455(6)(b)3 explains this process, and subsection (8)(d) provides as follows:

If either spouse establishes at a fair hearing that the community spouse resource allowance determined under sub. (6)(b) without a fair hearing does not generate enough income to

raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4)(c), the department shall establish an amount to be used under sub. (6)(b)3 that results in a community spouse resource allowance that generates enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4)(c).

Based upon the above, this administrative law judge can override the mandated asset allowance by determining assets in excess of the allowance are necessary to generate income up to the minimum monthly maintenance needs allowance for the community spouse. Therefore, the above provision has been interpreted to grant a hearing examiner the authority to determine an applicant eligible for MA even if a spousal impoverishment application was initially denied based upon the fact the combined assets of the couple exceeded the spousal impoverishment asset limit.

Per the testimony at hearing, none of the assets that are under this request generate income. See Exhibit 18 (#4-7). Accordingly, they cannot be allocated. I also note that it appears questionable about what the community spouse's income is comprised of per the information at hearing. Her social security is not questioned, but rather the \$3360 in monthly long term care insurance payments which goes to pay her rent, is income. The allocation request seeks to raise her income to a minimum amount to maintain her in the community. However, the \$3360 would seem to put her above that minimum at this point, and no evidence suggests that this income should be disregarded. In the end, I find no basis to allocate assets in this matter.

CONCLUSIONS OF LAW

None of the assets can be reallocated to the community spouse in this matter.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of February, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 3, 2015.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability
Attorney John Kitzke